

Mackall, Rebecca Mackall, Christiana Mackall, and Caroline Mackall.

The bill states, that the plaintiffs sue as well for themselves as the other creditors of the late Benjamin Mackall, who, with the defendant Key, was indebted to the plaintiff Middleton by several single bills in the sum of \$3,240, which single bills he assigned to the other plaintiffs for a valuable consideration; that, after the death of the late Benjamin Mackall, suits were brought on them by the plaintiff Middleton for the use of the other plaintiffs against the defendant Benjamin B. Mackall and Richard H. Mackall, the administrators of the deceased, and the defendant Key; that Richard H. Mackall died; and absolute judgments were recovered against the administrators, or the survivor of them, for principal, interests and costs, the whole of which yet remains unpaid; that the defendant Key, against whom also judgments were obtained, **487** *had taken the benefit of the insolvent law, and was then utterly insolvent; that the late Benjamin Mackall died, leaving a considerable real and personal estate; and these defendants, except Edmund Key, his children and heirs-at-law; that his son Richard H. Mackall, had died intestate and without issue; that the defendant Benjamin B. Mackall had become a lunatic; in consequence of which the administration granted to him had been revoked, and administration *de bonis non* had been granted to the defendant Louis Mackall; and that the personal estate of the intestate was wholly insufficient to pay his debts. Whereupon the bill prayed, that the real estate might be sold for the payment of the debts of the intestate, &c.

The plaintiffs by their petition, filed on the 25th of June, 1829, stated, that the defendant Benjamin B. Mackall had been returned summoned; that, as alleged in their bill, he was proved, by the annexed certificates of the attending physician of the hospital at Baltimore, in which he was then confined, to be a lunatic; but that no commission of lunacy had ever been issued against him. Whereupon they prayed, that a guardian might be appointed to appear and answer for him, &c.

BLAND, C., 26th June, 1829.—This petition having been submitted, the proceedings were read and considered.

The bill alleges, that one of the heirs, Benjamin B. Mackall, is a lunatic, and prays a subpoena against all the heirs, in the usual form, to appear, "the said Benjamin B. Mackall by guardian to be appointed in his behalf to answer," &c. It is not alleged, and it is admitted, that Benjamin B. Mackall has not been regularly found and declared to be a lunatic.

A subpoena was issued against him to which the sheriff has returned, "summoned, see certificate;" which certificate annexed to the writ is in these words. "This is to certify, that Mr. Benjamin